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Attorneys for Defendant  
BEST OVERNITE EXPRESS, INC.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

JOHN BROCKMAN, an individual,	)	Case No. 08 CV 0257 LAB JMA
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER OF DEFENDANT BEST
	)	OVERNITE EXPRESS, INC. TO
	)	COMPLAINT OF PLAINTIFF JOHN
BEST OVERNITE EXPRESS, INC., A	)	BROCKMAN
CALIFORNIA CORPORATION; and	)	
DOES 1 through 10, inclusive,	)	
	)	
Defendants.	)	
	)	
	)	

Defendant Best Overnight Express, Inc. ("Best Overnight") answers  
the complaint of plaintiff John Brockman ("plaintiff") on file herein as follows:

FIRST DEFENSE

1. Best Overnight admits the allegations of paragraphs 1 and 2  
of said complaint.

2. Best Overnight alleges that it is without knowledge or  
information sufficient to form a belief as to the truth of the allegations of  
paragraphs 3 and 4 of said complaint.

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1 11. Best Overnite alleges that it is without knowledge or  
2 information sufficient to form a belief as to the truth of the allegations of  
3 paragraph 17 of said complaint.

4 12. Best Overnite admits the allegations of paragraph 18 of said  
5 complaint.

6 13. Best Overnite denies each and every allegation contained in  
7 paragraphs 19 through 21 of said complaint.

8 14. Best Overnite denies each and every allegation contained in  
9 paragraph 22 of said complaint, and further specifically denies that plaintiff  
10 has been damaged in any sum whatsoever or at all by Best Overnite.

11 15. Best Overnite alleges that it is without knowledge or  
12 information sufficient to form a belief as to the truth of the allegations of  
13 paragraph 23 of said complaint.

14 16. In answer to the allegations of paragraph 24 of said  
15 complaint, Best Overnite hereby realleges and incorporates by reference as  
16 though set forth fully herein each and every admission, allegation and denial  
17 contained in paragraphs 1 through 15 herein.

18 17. Best Overnite alleges that it is without knowledge or  
19 information sufficient to form a belief as to the truth of the allegations of  
20 paragraph 25 of said complaint.

21 18. In answer to the allegations of paragraph 26 of said  
22 complaint, Best Overnite admits and alleges that on or about October 31,  
23 2007, John Brockman voluntarily terminated his employment with Best  
24 Overnite.

25 19. Best Overnite denies each and every allegation contained in  
26 paragraph 27 of said complaint.

1           20. Best Overnite denies each and every allegation contained in  
2 paragraph 28 of said complaint, and further specifically denies that plaintiff  
3 has been damaged in any sum whatsoever or at all by Best Overnite.

4           21. In answer to the allegations of paragraph 29 of said  
5 complaint, Best Overnite hereby realleges and incorporates by reference as  
6 though set forth fully herein each and every admission, allegation and denial  
7 contained in paragraphs 1 through 20 herein.

8           22. Best Overnite alleges that it is without knowledge or  
9 information sufficient to form a belief as to the truth of the allegations of  
10 paragraph 30 of said complaint.

11           23. Best Overnite denies each and every allegation contained in  
12 paragraphs 31 through 33 of said complaint.

13           24. Best Overnite alleges that it is without knowledge or  
14 information sufficient to form a belief as to the truth of the allegations of  
15 paragraph 34 of said complaint.

16           25. Best Overnite denies each and every allegation contained in  
17 paragraph 35 of said complaint.

18           26. Best Overnite admits the allegations of paragraph 36 of said  
19 complaint.

20           27. Best Overnite alleges that it is without knowledge or  
21 information sufficient to form a belief as to the truth of the allegations of  
22 paragraph 37 of said complaint.

23           28. Best Overnite admits the allegations of paragraph 38 of said  
24 complaint.

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26 ///

1           29. Best Overnite denies each and every allegation contained in  
2 paragraph 39 of said complaint, and further specifically denies that plaintiff  
3 has been damaged in any sum whatsoever or at all by Best Overnite.

4           30. Best Overnite admits the allegations of paragraphs 40 and  
5 41 of said complaint.

6           31. In answer to the allegations of paragraph 42 of said  
7 complaint, Best Overnite hereby realleges and incorporates by reference as  
8 though set forth fully herein each and every admission, allegation and denial  
9 contained in paragraphs 1 through 30 herein.

10          32. Best Overnite alleges that it is without knowledge or  
11 information sufficient to form a belief as to the truth of the allegations of  
12 paragraph 43 of said complaint.

13          33. Best Overnite admits the allegations of paragraphs 44 and  
14 45 of said complaint.

15          34. Best Overnite denies each and every allegation contained in  
16 paragraph 46 of said complaint, and further specifically denies that plaintiff  
17 has been damaged in any sum whatsoever or at all by Best Overnite.

18                           SECOND DEFENSE

19          35. Pursuant to 29 U.S.C. §213(b)(1), employees, such as  
20 plaintiff herein, who are subject to the jurisdiction of the Secretary of  
21 Transportation under the Motor Carriers Act, 49 U.S.C. §3102(b), are exempt  
22 from the overtime provisions of the Federal Labor Standards Act.

23          36. By virtue of the foregoing, plaintiff is barred from any  
24 recovery whatsoever from or against Best Overnite under the fourth and fifth  
25 causes of action of said complaint.

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THIRD DEFENSE

37. Pursuant to California Industrial Welfare Commission Wage Order No. 9-2001 at section 3(L), employees, such as plaintiff herein, who serve as interstate drivers, are exempt from the state's overtime regulations.

38. By virtue of the foregoing, plaintiff is barred from any recovery whatsoever from or against Best Overnight under the first, third and fifth causes of action of said complaint.

FOURTH DEFENSE

39. Best Overnight has paid to plaintiff herein, on a timely basis and with proper itemization, all wages to which plaintiff was entitled.

40. By virtue of the foregoing, plaintiff is barred from any recovery whatsoever from or against Best Overnight on any of the causes of action of said complaint.

FIFTH DEFENSE

41. Without admitting that plaintiff has been damaged in any sum whatsoever or at all, Best Overnight is informed and believes and based on such information and belief alleges that if plaintiff has suffered any damages as alleged in his complaint, such damages were proximately caused in whole or in part by plaintiff's own acts or omissions; and any damages otherwise recoverable by plaintiff should be reduced in the proportion to which such damages resulted from his own said conduct.

SIXTH DEFENSE

42. Said complaint fails to state a cause of action against Best Overnight upon which relief can be granted.

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1 WHEREFORE, defendant Best Overnight Express, Inc. prays for  
2 judgment as follows:

- 3 1. That plaintiff take nothing by his complaint;
- 4 2. That said complaint be dismissed with prejudice;
- 5 3. For Best Overnight's costs of suit incurred herein; and
- 6 4. For such other and further relief as this Court may deem  
7 just and proper.

8 Dated: April 2, 2008

SCOPELITIS, GARVIN, LIGHT, HANSON &  
9 FEARY, LLP

10  
11 By: /s/Kathleen C. Jeffries  
12 Kathleen C. Jeffries  
13 Attorneys for Defendant  
14 BEST OVERNITE EXPRESS, INC.  
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**PROOF OF SERVICE**

I, **Kathleen C. Jeffries**, am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2 North Lake Avenue, Suite 460, Pasadena, California 91101.

On, April 2, 2008, I served the foregoing document described as **ANSWER OF DEFENDANT BEST OVERNITE EXPRESS, INC. TO COMPLAINT OF PLAINTIFF JOHN BROCKMAN** on interested parties in this action by placing a √ true copy/ the \_ original thereof enclosed in a sealed envelope addressed as follows:

Mr. Michael Tracy  
Law Offices of Michael Tracy  
2030 Main Street, Suite 1300  
Irvine, California 92614  
**(Attorney for plaintiff John Brockman)**

√ **(BY MAIL)** I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

√ I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**(STATE)** I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

√ **(FEDERAL)** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 2, 2008, at Pasadena, California.

/s/  
Kathleen C. Jeffries